

Big Ear

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The Federal Communications Commission has taken a step—tentative, inadequate but significant—toward the protection of privacy in private communications. After two years of hearings and thorough consideration, it has unanimously adopted rules to prohibit “the use of any radio device to overhear or record the private conversations of others without the consent of all parties engaged in the conversations.” In a period when electronic snooping has become an industry and a fear of “bugs” infects even the American home, it is heartening to have the value of privacy recognized and championed by a Federal regulatory agency.

It is hardly surprising that the FCC left law enforcement agencies outside the scope of its new rules. It has no means of controlling these agencies; and their conduct is, in any case, a matter for regulation by the Federal and state governments under which they operate. Nevertheless, the plain fact is that these agencies represent a major share of the threat to privacy. Bugging and wiretapping are widely practiced, and in some cases with the sanction of state governments, in the name of law enforcement.

The FCC order issued on Monday contains what must surely take rank as the most hilarious single sentence in American legal literature: “Initially, it may be assumed that law enforcement officials conduct their activities within the framework of existing law and authority.” Existing law and authority in the form of Section 605 of the Federal Communications Act explicitly forbid any use of information obtained by telephone tapping without the consent of at least one of the parties to the telephone conversation. Yet the FBI, within shouting distance of the FCC, blatantly violates this Act of Congress by the open admission of its director. And, of course, police forces all over the country follow the lawless example of the FBI.

So, there may be some skepticism as to the effectiveness with which the new FCC rules will be enforced. The FCC deserves applause, nonetheless, for making the effort. It deserves applause, in addition, for giving its ban on clandestine snooping a broad application to electronic eavesdropping on all private conversations, even if one party to the conversation consents to the eavesdropping.

This will entail some sacrifice of efficiency in obtaining accurate records of private conversations. But the sacrifice will be far outweighed, we think, by the benefits to the protection of privacy. In no single respect is a free society more significantly distinguished from a totalitarian society than in the value it puts on privacy and on the inviolability of private communication between free citizens. The FCC has moved to safeguard one of the essential aspects of freedom.